

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 375 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
  2. To be referred to the Reporter or not?
  3. Whether Their Lordships wish to see the fair copy of the judgement?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
  5. Whether it is to be circulated to the Civil Judge?

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COMMISSIONER OF INCOME TAX

Versus

ASHWINKUMAR GORDHANBHAI & BROS

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Appearance:

MR MANISH R BHATT for Petitioner

MR JP SHAH for Respondent No. 1

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CORAM : MR.JUSTICE R.K.ABICHANDANI and  
MR.JUSTICE KUNDAN SINGH

Date of decision: 04/05/98

ORAL JUDGEMENT (Per R.K.Abichandani, J)

The Income Tax Appellate Tribunal has referred the following questions for the opinion of this Court under Section 256(1) of the Income Tax Act, 1961.

"Whether, on the facts and in the circumstances of the case, the Tribunal was right in law in

holding that the assessee company was engaged in manufacturing and processing activities and therefore should be charged to tax at the concessional rate?"

2. The matter pertains to the assessment year 1976-77. The Assessee company claimed that since it was a Company engaged in processing it was required to be charged income tax at a concessional rate. The ITO disallowed the claim but the CIT Appeals allowed it holding that the assessee was an industrial company. The Tribunal in appeal by the Revenue following its own decision in the assessee's own case for the assessment year 1973-74 to 1975-76 confirmed the order of the CIT Appeals. In its earlier decision in respect of the assessment years 1973-74 to 1975-76 which was given by the Tribunal in the appeal filed by the assessee, the Tribunal considering the claim of the assessee for relief under section 104(4)(a) of the said Act came to the conclusion that the goods in question were being processed by the assessee and therefore the assessee was entitled to the relief under Section 104(4)(a) of the Act. While passing the present order in appeal filed by the Revenue in respect of the assessment year 1976-77, the Tribunal simply referred to its earlier decision dated 14.9.81 pertaining to assessment years 1973-74 to 1975-76 and referring to the fact that in that order it was held that the assessee processed goods in question and consequently was entitled to relief under section 104(4)(a) of the Act proceeded to state:

"For the reasons stated in that order we held that the assessee is entitled to the relief and reject this appeal."

3. The decision was rendered obviously on an assumption that the provisions of Sub-section (4)(a) of Section 104 of the said Act were operative even in respect of the assessment year 1976-77. It would however be noted that Sub-section (4) of Section 104 came to be substituted by section 27 of the Taxation Laws (Amendment) Act, 1975 by the following provision, w.e.f. 1.4.76:-

"(4) Without prejudice to the provisions of Section 108, nothing contained in this section shall apply to a Company which is neither an Indian company nor a company which has made the prescribed arrangement for the declaration and payment of dividends within India."

This would mean that in the assessment year 1976-77 the provision of Sub-section (4)(a) of Section 104 as it was applicable in respect of the assessment years 1973-74 to 1975-76, did not exist. The provisions of Sub-section (4)(a) of Section 104 came to be restored by an amendment made in Section 104 by Section 20 of the Finance (2) Act, 1977 but w.e.f. 1.4.78. Therefore, during the relevant assessment year, as it transpired during the course of hearing of this reference and was not at all disputed, the said provision on which the Tribunal placed reliance by referring to its earlier decision, did not in fact exist.

4. In this view of the matter it would be necessary for the Tribunal to examine the appeal independently of its earlier decision. We therefore leave the question unanswered. The Tribunal will decide the matter afresh and come to its own conclusion in accordance with law after hearing both the sides as the consequence of what we have stated above.

5. The reference stands disposed of accordingly with no order as to costs.

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